Supreme Court, U.S.
FILED
MAY - 9 2016
OFFICE OF THE CLERK

No. 14-9496

IN THE

Supreme Court of the United States

ELIJAH MANUEL,

Petitioner,

v.

CITY OF JOLIET, ILLINOIS, *ET AL.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION FOR PUBLIC DEFENSE IN SUPPORT OF PETITIONER, AND SUGGESTING REVERSAL

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May 9, 2016

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INTEREST OF *AMICUS CURIAE* [1]

The National Association for Public Defense ("NAPD") is an association of approximately 13,000 public defense practitioners. Formed in 2013, 50 years after this Court recognized the right to counsel as "fundamental and essential," *Gideon v. Wainright*, 372 U.S. 335, 344 (1963), NAPD's mission is to fulfill *Gideon*'s promise of fairness and equal access to justice in America's criminal courts. NAPD is dedicated to defending liberty, to conveying dignity, and to protecting the constitutional rights of indigent defendants who—due to their poverty—are often treated as if they have forfeited those rights.

NAPD includes every professional who is critical to delivering the right to counsel: lawyers, social workers, case managers, investigators, sentencing advocates, paralegals, civil legal aid providers, education advocates, expert support, information technology gurus, teachers and trainers, financial professionals, researchers, legislative advocates, communications personnel, and administrative personnel. NAPD's collective expertise represents the full array of public defender systems: state, county and local systems.

While NAPD fully supports the arguments set forth by Petitioner, it writes separately as *amicus curiae* to highlight for the Court its unique

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[1] The parties have consented to the filing of this brief and filed their letters of consent with the Clerk on April 12 and 15, 2016. Pursuant to Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amicus* and its counsel, made a monetary contribution to the preparation or submission of the brief.

perspective as a systemic participant in the day-to-day functioning of the criminal justice system. From this vantage point, NAPD has often observed the collateral harms that can, and frequently do, befall individuals who are detained for lengthy periods before trial, and NAPD's observations highlight the high stakes that are involved as this Court decides whether the Fourth Amendment provides a complete and adequate remedy for individuals who have been unreasonably seized and detained after the initiation of legal process.

SUMMARY OF ARGUMENT

Elijah Manuel spent 48 days in jail even though the police officers who had unreasonably seized him had no basis whatsoever to believe he had committed any crime. During those weeks of improper detention, he could not work or complete his college coursework. He was forced to drop out of college (though he remained on the hook financially for the tuition). He defaulted on his student loan obligations and other bills. He lost his apartment. His credit score suffered. His reputation was tarnished.

These consequences are not unique to Mr. Manuel. Each and every day, in jails across the United States, hundreds of thousands of individuals are subject to prolonged periods of pretrial detention.[2] Admittedly, some of those

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[2] At the midpoint of 2014, the last year for which statistics are available, 467,500 unconvicted persons were detained in local U.S. jails. Todd D. Minton & Zhen Zeng, Bureau of Justice Statistics, *Jail Inmates at Midyear 2014*, at 3 (June 2015), http://goo.gl/R3XzEv. Overall, approximately 6 in 10 jail inmates were in jail awaiting court action or on a current charge—a rate unchanged since 2005. *Id.*

individuals are dangerous and detention is warranted. "[B]ut a significant number are charged with nonviolent offenses and simply cannot afford relatively modest bonds imposed to assure their presence at future court appearances." Samuel R. Wiseman, *Pretrial Detention and the Right to be Monitored*, 123 Yale L.J. 1344, 1346 (2014). This reality makes it more likely that individuals who are unlawfully detained will suffer greater harms because they will not be able to post bond. The harms themselves range in severity, but frequently come in the form of loss of employment, loss of housing, strain on family relationships, and physical and mental health effects.

These collateral consequences are especially egregious when an individual has been wrongfully arrested and detained for a lengthy period of time. A damages remedy cannot make that person whole. But interpreting the Fourth Amendment to permit malicious prosecution claims as a remedy for all of the many harms that result directly from the unreasonable seizure of individuals after the initiation of legal process but without probable cause is critical to those who are unjustly caught up in the system.

ARGUMENT

I. PRETRIAL DETAINEES ARE SUBJECT TO A VORTEX OF HARMS

More than forty years ago, this Court recognized the "detrimental impact" that pretrial incarceration can have on an individual. *Barker v. Wingo*, 407 U.S. 514, 532 (1972). "It often means loss of a job; it disrupts family life; and it enforces idleness." *Id.* The consequences of pretrial

detention can push an individual off track for just long enough and just seriously enough to make their post-release lives a constant uphill battle.

A. *Economic Effects*

A detainee's economic troubles rank at or near the top of the list of the deleterious collateral results of pretrial detention, and often contribute to a downward spiral of other problems. It usually starts when the detainee loses his job, which can happen even if he is jailed for a short time—"either because the employer does not want to be associated with someone under indictment or because the defendant cannot make bail and cannot show up for work." Andrew D. Leipold, *The Problem of the Innocent, Acquitted Defendant*, 94 Nw. U. L. Rev. 1297, 1308 (2000). Without income, a detainee can fall behind on bills and rent—a problem that often continues after his release. Then, in a domino effect, that can lead to the detainee losing his housing, his car, and other basic necessities. Wiseman, 123 Yale L.J. at 1356-57.

Even when a detainee re-enters the community, he faces an onerous struggle in finding a job. Any time spent in jail creates social stigma, and it is well known that employers are generally averse to hiring individuals with arrest records, even if they were never convicted. Leipold, 94 Nw. U. L. Rev. at 1308; Amanda Petteruti & Nastassia Walsh, Justice Policy Inst., *Jailing Communities: The Impact of Jail Expansion and Effective Public Safety Strategies*, at 17 (Apr. 1, 2008), http://goo.gl/n02mTi.

B. *Family Relationships*

Family relationships also suffer greatly as a result of pretrial detention. Family members experience emotional and economic hardships and declining health—attributable to the stress, financial strain, and social stigma of the circumstances. Laura I. Appleman, *Justice in the Shadowlands: Pretrial Detention, Punishment, & the Sixth Amendment*, 69 Wash. & Lee L. Rev. 1297, 1320 (2012); Petteruti & Walsh at 17. "Often, family members must adjust their lives to take care of a displaced child." *Id.* at 17-18. Those family members face "reduced earning potential and difficulty finding child care, even as debts and expenses associated with court and legal fees mount." KJ Dell'Antionia, *When Parents Are in Prison, Children Suffer*, N.Y. Times: Well (Apr. 26, 2016, 10:48 a.m.), http://nyti.ms/26rrf8O. Otherwise, children of detainees frequently wind up in foster care. Appleman, 69 Wash. & Lee L. Rev. at 1319-20.

Regardless of where the children of detainees find themselves, they are subject to "significant uncertainty and instability." Nancy G. La Vigne, *et al.*, Urban Institute Justice Policy Center, *Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents*, at 1 (Feb. 2008), http://goo.gl/54g9Eg. They might be separated from their siblings and friends. *Id.* at 4. They are likely to face greater financial hardship than other children. *Id.* at 5.

Moreover, "the barriers to communication between a child and his or her incarcerated parent are tremendous," especially when caregivers are reluctant to facilitate such contact. *Id.* at 1.

Making arrangements to visit a detainee can be "time consuming, expensive, and difficult to coordinate." *Id.* at 4. And while there are resources available to help prepare a child to visit a parent in jail, *see, e.g.*, Sesame Street, *Little Children Big Challenges: Incarceration, A Guide to Support Parents and Caregivers*, www.sesamestreet.org/incarceration, the "intimidating, uncomfortable, and humiliating conditions" that are designed to promote safety within the facility may have the effect of discouraging future contact. La Vigne, *et al.* at 5.

C. *Mental and Physical Health*

"Conditions in all jails have a negative impact on the health and well-being of the people in them," even those who enter jail healthy. Petteruti & Walsh at 15. This is partly because jail complexes are often old and decaying, and therefore "have various dangers associated with them, including mold, poor ventilation, lead pipes, and asbestos." Appleman, 69 Wash. & Lee L. Rev. at 1318. This environment "can be very detrimental to the health of pretrial detainees." *Id.* Moreover, the intense concentration of prisoners (who are constantly in flux), staff, and visitors make jails "vector[s] of contagious diseases," including serious infections and sexually transmitted diseases. *Id.*

"Pretrial incarceration is particularly difficult for those who suffer from poor health, as jails rarely have adequate resources available to treat people with physical or mental health problems." *Id.* Jails tend to be ill-equipped to deal with detainees' serious health problems, "and what

healthcare is available is hard to provide to jails' often short-term visitors." *Id.* at 1318-19.[3]

Moreover, pretrial detention exacerbates mental illness, which puts detainees at risk of harming themselves or others. *Id.* at 1319. Indeed, suicide has been the leading cause of death in local jails since 2000, and unconvicted jail inmates are more likely to commit suicide than convicted inmates. Margaret Noonan, *et al.*, Bureau of Justice Statistics, *Mortality in Local Jails and State Prisons, 2000-2013 – Statistical Tables*, at 12 (Aug. 2015), http://goo.gl/vz32k8. Jails have a higher suicide rate (46 per 100,000 in 2013) than even prisons (15 per 100,000), *id.* at 3, 21, which can be explained in part by the "shock of confinement" felt by those who are jailed for the first time and find themselves "stripped of their job, housing, and basic sense of normalcy." Maurice Chammah & Tom Meagher, The Marshall Project, *Why Jails Have More Suicides Than Prisons*, (Aug. 4, 2015), https://goo.gl/uq3HAi.

D. *Legal Implications*

The time immediately preceding trial is critical to the legal proceedings as a whole—in particular to the development of the accused's defense, and to his ability to prove his innocence

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[3] These negative effects are not limited to the time a detainee actually spends in jail. Many inmates become ineligible for health benefits while they are in jail, meaning that when they are released they are often "forced to rely on emergency rooms for even the most routine medical treatments." Thus, even after an individual is released, the burden on taxpayers continues. *Attorney General Eric Holder Speaks at the National Symposium on Pretrial Justice* (June 1, 2011), https://goo.gl/qbu4Nz.

and secure his quick release. But without a doubt, "the limitations imposed by incarceration" hamper those essential preparations. *Campbell v. McGruder*, 580 F.2d 521, 532 (D.C. Cir. 1978) (internal quotation marks and citation omitted). In *Barker*, this Court recognized that "if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense." *Barker*, 407 U.S. at 533. "Indeed, the defendant is often the key source of factual details on which to base pretrial motions and negotiations. A defendant free on bail or on his own recognizance can therefore make good use of that liberty by consulting and participating fully with counsel in time-consuming preparations for trial, including tracking down witnesses and evidentiary leads." *People v. Johnson*, No. 37, 2016 N.Y. LEXIS 752, at *16 (N.Y Apr. 5, 2016) (internal citations and quotation marks omitted). An individual who is detained before trial cannot.

Empirical studies show a strong correlation between pretrial detention and a negative trial outcome. In fact, when a defendant is at liberty pending trial, he stands a better chance of not being convicted at all. *Campbell*, 580 F.2d at 531.

II. SECTION 1983 CLAIMS INVOLVING PRETRIAL DETENTIONS WITHOUT PROBABLE CAUSE SHOULD BE COGNIZABLE UNDER THE FOURTH AMENDMENT

The serious and multiple harms discussed above weigh strongly in favor of an interpretation of the Fourth Amendment that provides a remedy for individuals who have been wrongfully detained after the initiation of legal process. Such a remedy

would further the core purposes of 42 U.S.C. § 1983, which are to compensate victims of constitutional torts and to deter future constitutional violations. *Owen v. City of Independence*, 445 U.S. 622, 651 (1980) ("[Section] 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well.").

Section 1983 was "intended to create a species of tort liability in favor of persons who are deprived of rights, privileges, or immunities secured to them by the Constitution." *Carey v. Piphus*, 435 U.S. 247, 253 (1978) (internal quotation marks and alterations omitted). Thus, Section 1983 makes damages available when an individual's constitutional rights have been violated and when he has suffered compensable injury. *Id.* at 255.

When a plaintiff seeks damages pursuant to Section 1983 for violations of constitutional rights, the courts look to principles derived from the common law of torts. *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 306 (1986). Tort law has long recognized that a malicious prosecution can cause "unjustified torment and anguish" of the very sorts described above. *Albright v. Oliver*, 510 U.S. 266, 283 (1994) (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* § 119, pp. 870-89 (5th ed. 1984); T. Cooley, *Law of Torts* 180-87 (1879)).

The consequences of pretrial detention are serious for anyone who has not yet been convicted of a crime, but "[i]t is especially unfortunate to impose them on those persons who are ultimately

found to be innocent." *Barker v. Wingo*, 407 U.S. 514, 533 (1972). "[A] wrongful indictment . often works a grievous, irreparable injury to the person indicted. The stigma cannot be easily erased. In the public mind, the blot on a man's escutcheon, resulting from such a public accusation of wrongdoing, is seldom wiped out by a subsequent judgment of not guilty. Frequently, the public remembers the accusation, and still suspects guilt, even after an acquittal." *In re Fried*, 161 F.2d 453, 458-59 (2d Cir. 1947). As the accused struggle to find their footing in the community, they are routinely saddled with debt (often from legal bills stemming from their wrongful arrest and detention) and in poor health, and they must repair their relationships with friends and family.

Making Fourth Amendment claims available to those wrongfully detained for prolonged periods of time after the initiation of legal process would not only "compensate persons for injuries caused by the deprivation of rights," *Carey*, 435 U.S. at 255, but doing so would also "deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights." *Richardson v. Knight*, 521 U.S. 399, 403 (1997) (internal quotation marks and citations omitted).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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